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Egbert Classen

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/565,695
Filing Date: January 23, 2006
Appellant(s): CLASSEN ET AL.

Russell W. Warnock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/1/08 appealing from the Office action mailed 7/25/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-------------|----------------|--------|
| 5,343,632 | DINH | 9-1994 |
| JP 53-36067 | OKAMOTO et al. | 4-1978 |

(9) Grounds of Rejection

The following ground(s) of objection are applicable to the specification:

The amendment filed 5/1/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly added Fig. 1 and the newly added detailed description of the present invention and the ensuing 4 pages of new specification constitute new matter. The specification and claims as filed on 1/23/06 show no support for the added detail illustration as shown in added Fig. 1. The added items of crockery baskets, vertically arranged heat tube, conduit system, upstream and downstream arrangement of heat tube, cold side of heat tube, program steps with various clean and rinse dry and pre-wash cycles, etc are new matters that are not supported by the original filed specification and claims.

The following ground(s) of rejection are applicable to the appealed claims:

Claims 7-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed “no outside air being introduced into the treatment chamber and the conduit system” in claims 7 and 13 are new matter not supported by the original filed specification. .

Claims 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dinh (U. S. Pat. 5,343,632).

Dinh shows a method for operating an appliance 230 comprising subjecting the items 244 retained in the appliance 230 to a drying step, conducting air (by fan 238) from a treatment chamber 234 via a conduit system 250 in which both ends of at least one heat pipe 252 protrude, conducting the air through the at least one heat pipe 252, recirculating the air back to the treatment chamber 234, during the passage of the air between its exit 248 of the treatment chamber and its recirculation to the treatment chamber 234, the air is cooled by condenser 260, moisture is removed from the air (via drain 258) and the air is subsequently reheated by heater 242 with no outside air being introduced into the treatment chamber and the conduit system (see abstract and col. 7, line 18 to col. 8, line 28). With regard to claim 13, the air recirculation is conducted during the drying cycle (col. 8, lines 6-10). With regard to the type of the appliance in claim 13, examiner does not give any patentable weight for the limitations in first five lines of claim 13. Moreover, the method of Dinh can be used for operating any type appliance including dishwasher with pre-wash, clean, intermediate rinse, clear rinse and dry programme. Dinh also teaches that the household appliance could be a residential dryer or dishwasher (col. 8, lines 6-10).

Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Okamoto et al. (JP 53-36067).

Okamoto et al. show a method for operating an appliance (see Fig. 1) comprising subjecting the items A retained in the appliance to a drying step, conducting air (by fan 8) from a treatment chamber 1 via a conduit system 6, 7, 12, 11, 14 in which both ends of at least one

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heat pipe 19 protrude, conducting the air through the at least one heat pipe 19, recirculating the air back to the treatment chamber 1, during the passage of the air between its exit 5 of the treatment chamber 1 and its recirculation to the treatment chamber 1, the air is cooled by condenser 23, moisture is removed from the air (via drain 36) and the air is subsequently reheated by heater 14 with no outside air being introduced into the treatment chamber and the conduit system (see abstract and Figs. 1-3).

(10) Response to Argument

Objection to the disclosure

According to MPEP, if both the claims and specification contain new matter either directly or indirectly and there has been both a rejection and objection by the examiner, the issue becomes appealable and should not be decided by petition (MPEP 2163.06 II). Therefore, the Board is requested to consider the issue of new matter as stated in the objection under 35 USC 132(a) and the rejection under first paragraph of 35 USC 112.

It is noted that the appellant fails to presented arguments regarding the objection to the specification under 35 USC 132(a) for adding new matter. In particular, the examiner held that the amendment filed 5/1/07 included new matter which is not supported by the original disclosure. The newly added Fig. 1 and the newly added detailed description of the present invention and the ensuing 4 pages of new specification constitute new matter. The specification and claims as originally filed on 1/23/06 show no support for the added detail illustration as shown in added Fig. 1. The added items of crockery baskets, vertically arranged heat tube, conduit system, upstream and downstream arrangement of heat tube, cold side of heat tube, program steps with various clean and rinse dry and pre-wash cycles, etc are new matters which

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are not supported by the original specification and claims filed on 1/23/06. Since the appellant fails to argue this objection in the Brief, then, the Board is urged to affirm the new matter issues under 35 USC 112, first paragraph and objection under 35 USC 132 (a) as stated above.

Rejection to the claims

A. Claims 7-13 do not comply with the written description requirement of 35 U.S.C. § 112, first paragraph.

On pages 4-5 of the Brief, the appellant argues that claims 7-13 are supported by the specification in the paragraphs [0011] and [0024]. The appellant argues the specification explains that "In the closed air system any exchange of contaminated air from the surroundings is completely eliminated, preventing any back contamination of the items to be treated." The examiner disagrees with the appellant's arguments. The applicant never defines what "outside air" is. The paragraphs 0011 and 0024 do not disclose the details of the newly added "no outside air being introduced into the treatment chamber and the conduit system" in claim 7. The applicant's device does not perform a closed air system when the dryer door is at open position. The examiner respectfully submits that this rejection of claims 7-13 is proper and should be affirmed.

B. Claims 7-13 are unpatentable under 35 U.S.C. § 102(b) over the Dinh reference.

On page 5 of the Brief, the appellant argues that the Dinh reference is non-analogous art and nature does not teach or disclose the method for operating a household appliance recited in

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claim 7. The appellant also argues that the Dinh reference does not relate to a household appliance but, instead, relates to an industrial drying system. Therefore, one of ordinary skill in the art would not refer to the Dinh reference for a solution for a household appliance. Examiner totally disagrees with this line of arguments because Dinh patent clearly discloses and teaches the household appliance could be a residential dryer or dishwasher (col. 8, lines 6-10).

Examiner respectfully submits that this rejection of claims 7-13 is proper and should be affirmed.

C. Claims 7-12 are unpatentable under 35 U.S.C. § 102(b) over the Okamoto et al. reference.

On page 6 of the Brief, the appellant argues that the Okamoto et al. reference does not teach or disclose the method for operating a household appliance recited in claim 7. In particular, the Okamoto et al. reference appears to introduce outside air via an inlet 15 and thus this prior art arrangement is does not disclose a method such as recited in claim 7 in which no outside air is introduced into the treatment chamber and the conduit system. The examiner disagrees with the appellant's interpretation of the Okamoto patent. Okamoto reference numeral 15 represents a seal not air inlet as argued by the appellant. Okamoto patent clearly teaches a method for drying operation of an appliance (see Fig. 1) same as the applicant's. In Okamoto patent, the device is clearly operating in a closed system which also contains "no outside air". In Okamoto patent, the air is recirculated which may travel through a conduit system 6, 7, 12, 11, 14, 13, 1, 6. The recirculated air is introduced into the treatment chamber via multiple air inlets 3. The path shows no outside air is being introduced into the treatment chamber 1 and the conduit system same as claimed.

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Examiner respectfully submits that this rejection of claims 7-13 is also proper and should be affirmed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jiping Lu/
Primary Examiner
Art Unit 3749

Conferees:

/Steven B. McAllister/

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/Janet C. Baxter/

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